

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

X

ELLEN SCATORCHIA,

Plaintiff,

-against-

COUNTY OF SUFFOLK, *et al.*,

Defendants.

X

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

MAY 18 2005

ORDER PLAND OFFICE

CV 01-3119 (TCP)

ORENSTEIN, Magistrate Judge:

Plaintiff moves by letter application for an order restoring the above-entitled action to the active calendar. *Valli Letter*, dated April 29, 2005.

It appears that the "new" retained attorney for the plaintiff filed a Notice of Appearance on or about October 1, 2003. However, it seems that because counsel filed Notices of Appearances in two actions, the Notice of Appearance in this action may have been inadvertently filed in the other action. See *Valli Letter*, dated May 16, 2005 with attachment of *Valli Letter*, dated October 1, 2003 with attachments.

Clearly the plaintiff did not abandon the within action or intend that it be dismissed for failure to prosecute. See Fed. R. Civ. P. 41.

Accordingly this Court reports and recommends that the within action be restored to the active calendar of the Court.

Any objections to this Report and Recommendation must be filed with the Clerk of the Court with a copy to the undersigned within fifteen (15) days of the date of this Report. Failure to file objections within this period waives the right to appeal the District Court's order. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a), 6(e); *Beverly v. Walker*, 118 F.3d 900, 902 (2d Cir. 1997); *Savoie v. Merchants Bank*, 84 F.3d 52, 60 (2d Cir. 1996); *IUE AFL-CIO Pension Fund v. Herrmann*, 9 F.3d 1049, 1054 (2d Cir. 1993); *Roldan v. Racette*, 984 F.2d 85, 89 (2d Cir. 1993); *Frank v. Johnson*, 968 F.2d 298, 299 (2d Cir. 1992).

SO ORDERED.

Dated: Central Islip, New York
 May 18, 2005

MICHAEL L. ORENSTEIN
United States Magistrate Judge